

REMARKS

Applicants respectfully request reconsideration and reexamination of the present application in light of the amendments and the remarks below.

Claims 1-20 are pending in this application. Applicants elected Group I, drawn to claims 1-13, 17, and 20 directed to products (Paper No. 7), and Applicants elected Example 6 (Paper No. 9). Claims 14-19, drawn to non-elected inventions, have been cancelled

Claims 4, 5, 7-13, and 20 have been amended. These claim amendments are made to clarify the subject matter therein. Therefore, these amendments are submitted in order to place the claims in condition for allowance, and do not disclaim any subject matter to which the Applicants are entitled.

In addition, Applicants request that the English language translations of the non-English language foreign priority documents (DE 100 65 433.9 which was filed on December 27, 2000, and DE 101 30 830.2 which was filed on June 21, 2001) be made of record in accordance with 37 C.F.R. 1.55.

Statements ~~that the~~ translations of the certified copies are accurate have also been provided.

Rejection Under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 4-13 and 20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention (Paper No. 10, pages 3-4). Applicants respectfully traverse this rejection.

The Examiner stated that claims 4 and 5 are indefinite because formula 1 is not present in these independent claims. Claim 4 and Claim 5 have been amended to depend from claim 1.

The Examiner stated the phrases “the radical $-C(O)-R^{10}$ has the indicated meanings of R^{10} ” and “the radical $-C(O)-R^{10}$ has the indicated meanings of R^{10} indicated above for a group” in claims 7 and 20 are confusing.

In claims 7 and 20, R^{10} may either be a hydroxyl group, or $-C(O)-R^{10}$ where the R^{10} of this group ($-C(O)-R^{10}$) has the meaning as defined in claim 1.

The Examiner stated that claim 10 does not conform to MPEP 608.01 (m) since each claim must end in a period and no other periods may be used elsewhere in the claims. Claim 10 has been amended accordingly.

It is thus submitted that the claims 4-13 and 20 meet the requirements of 35 USC § 112, second paragraph, and reconsideration and withdrawal of the present rejection is respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-13 under 35 U.S.C. § 103(a) as unpatentable over Haning et al., (WO 01/70687) (Paper No. 10, pages 5-7). Applicants respectfully traverse.

The reference (WO 01/70687) cited by the Examiner was published on September 27, 2001, and was filed as a PCT application on March 19, 2001. The present application was filed in the U.S. on December 21, 2001. However, priority has been claimed to two German patent applications, DE 100 65 433.9 which was filed on December 27, 2000, and DE 101 30 830.2 which was filed on June 21, 2001. In accord with 37 C.F.R. 1.55, English translations for both priority documents have been provided as well as statements by the translator that the translations of the certified copies are accurate. Thus, the priority date as claimed in the present application is earlier than the publication date and filing date of WO 01/70687.

Furthermore, compounds of Formula (I) may be found, for example, on pages 3-7 of DE 100 65 433.9 (filed on December 27, 2000) which predates the PCT filing date and publication date of WO 01/70687.

It is therefore respectfully submitted that the current invention is novel and nonobvious in view of the prior art references because the priority date of the present invention is earlier than the filing date and publication date of WO 01/70687. For the foregoing reasons, Applicants respectfully request reconsideration and withdrawal of the present rejection.

Claim Objections

The Examiner objected to claims 7-9 and 11-13 as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim (Paper No. 10, page 3).

Claims 7-9 and 11-13 have been amended to eliminate the multiple dependent form.

It is submitted that Applicants have overcome the claim objections, and thus, claims 7-9 and 11-13 are allowable.

Allowable Subject Matter

The Examiner has stated that the elected species of Example 6 is allowable over the prior art of record since the closest prior art of record (WO 01/70687) fails to teach or suggest the group, -NH-C(O)-CH₂-C(O)O-, which is defined by the instant R³ variable (Paper No. 10, page 3).

CONCLUSION

For the foregoing reasons, Applicants submit that the claims are in condition for allowance and Applicants respectfully request reexamination of the present application, reconsideration and withdrawal of the present rejections and objections, and entry of the amendments. Should there be any further matter requiring consideration, Examiner Stockton is invited to contact the undersigned counsel.

If there are any further fees due in connection with the filing of the present reply, please charge the fees to undersigned's Deposit Account No. 13-3372. If a fee is required for an extension of time not accounted for, such an extension is requested and the fee should also be charged to undersigned's deposit account.

Respectfully submitted,

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